

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID REYNOLDS,

Petitioner,

vs

9:05-CV-1539

GARY GREENE, Superintendent,

Respondent.

APPEARANCES:

OF COUNSEL:

DAVID REYNOLDS

Petitioner, Pro Se

94-B-1249

Elmira Correctional Facility

P.O. Box 500

Elmira, NY 14902

HON. ANDREW M. CUOMO

Attorney General of the

State of New York

Attorney for Respondent

120 Broadway

New York, NY 10271

ALYSON J. GILL, ESQ.

Asst. Attorney General

DAVID N. HURD

United States District Judge

DECISION and ORDER

By Decision and Order filed May 2, 2007, the Report-Recommendation issued by United States Magistrate Judge David R. Homer was accepted and adopted in whole, and the petition filed by petitioner David Reynolds was denied and dismissed. Dkt. No. 18. Petitioner has appealed that dismissal to the United States Court of Appeals for the Second Circuit. Dkt. No. 20.

Presently before the Court is petitioner's request for a certificate of appealability ("COA"). Dkt. No. 21.

Appeals to the Court of Appeals in habeas corpus proceedings are governed by 28 U.S.C. § 2253, which provides in relevant part that:

- (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –
 - (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
 - (B) the final order in a proceeding under section 2255.¹

A COA may only be issued "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

After reviewing the file, and for the reasons set forth in the Court's prior Decision and Order and in Magistrate Judge Homer's Report-Recommendation in this action, the Court finds that petitioner has failed to make the showing required for issuance of a COA.

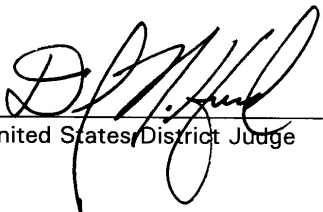
THEREFORE, it is

ORDERED, that petitioner's application for a certificate of appealability (Dkt. No. 21) is DENIED; and

The Clerk is directed to serve a copy of this Order on the parties.

IT IS SO ORDERED.

Dated: June 5, 2007
Utica, New York.


United States District Judge

¹ Rule 22 of the Federal Rules of Appellate Procedure also provides that an appeal may not proceed "unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c)." Fed.R.App.P. 22(b).

